

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88

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This document relates to:

*City of New York v. Amerada Hess Corp.,
et al.*, 04 Civ 3417

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**DEFENDANTS' NOTICE OF MOTION IN LIMINE REGARDING
APPLICATION OF THE COMMINGLED PRODUCT THEORY,
CONSIDERATION OF FAULT OF NONPARTIES BY JURY,
AND PROOF OF DATE OF HARM**

PLEASE TAKE NOTICE THAT the defendants listed in Appendix A ("Moving Defendants"), by counsel, will move this Court in limine, at a date and time to be determined at the Courthouse located at 500 Pearl Street, New York, New York 10007, to enter an order as follows:

1. As to any well at issue in this litigation, plaintiff, the City of New York, shall be barred from relying on the market share or the commingled product theories of alternative causation unless it first establishes that it has no other remedy against known spillers and leakers.
2. In the alternative, should the Court rule that the City is not required to show that it has no remedy against known spillers and leakers before resorting to the application of alternative causation theories, the Court should clarify two conditions for the application of either of these theories. Specifically, Moving Defendants ask the Court to rule that:

a. The Court will instruct the jury at trial to apportion liability to spillers and leakers who actually caused the City's alleged harm, whether or not those entities are parties to the litigation and will include such entities on the verdict form; and

b. The City bears the burden of proving when its alleged injury occurred.

The grounds for this Motion are set forth in Moving Defendants' Memorandum of Law in Support of Motion Limine Regarding Application of Commingled Product Theory, Consideration of Fault of Nonparties by Jury, and Proof of Date of Harm, filed with this Motion.

WHEREFORE, Moving Defendants request that the Court enter an Order granting the relief set forth in this Motion. The Defendants request an oral hearing on this motion.

Dated: April, 27, 2009
New York, NY

Respectfully submitted,

By /s/ George P. Sibley, III
Counsel

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Counsel for Flint Hills Resources, LP

On behalf of Defendants listed on
Appendix A

CERTIFICATE OF SERVICE

I certify that on April 27, 2009, a true and correct copy of this **DEFENDANTS' MOTION IN LIMINE REGARDING APPLICATION OF THE COMMINGLED PRODUCT THEORY, CONSIDERATION OF FAULT OF NONPARTIES BY JURY, AND PROOF OF DATE OF HARM** was served via email on liaison counsel and via LexisNexis File & Serve to all other counsel of record. A copy was provided to the Clerk, Seth Ard, by email.

/s/ George P. Sibley, III

APPENDIX A

This Motion in Limine is submitted on behalf of the following defendants:

Atlantic Richfield Company
BP Products North America Inc.
Chevron Environmental Corp.
Chevron U.S.A. Inc.
CITGO Petroleum Corporation
CITGO Refining and Chemicals Company L.P.
Coastal Eagle Point Oil Company
ConocoPhillips Company
Crown Central LLC
El Paso Merchant Energy-Petroleum Company
Equilon Enterprises LLC
Equistar Chemicals, LP
ExxonMobil Corporation
ExxonMobil Oil Corporation
Flint Hills Resources, LP
Getty Petroleum Marketing Inc.
Getty Properties Corp.
Hess Corporation
Lyondell Chemical Company
Mobil Corporation
Motiva Enterprises LLC
The Premcor Refining Group Inc.
Shell Oil Company
Shell Oil Products Company LLC (d/b/a/ Shell Oil Products Company)
Shell Petroleum, Inc.
Shell Trading (US) Company
Sunoco, Inc.
Sunoco, Inc. (R&M)
Texaco Inc.
Texaco Refining and Marketing (East) Inc.
TOTAL Petrochemicals USA, Inc.
TMR Company (f/k/a Texaco Refining and Marketing Inc.)
Ultramar Energy Inc.
Ultramar Ltd.
Unocal Corporation
Union Oil Company of California
Valero Energy Corporation
Valero Marketing and Supply Company
Valero Refining and Marketing Company